



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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HEARING OFFICER NOTICE

TO: All Registered Carriers and Other Interested Persons

FROM: Tina W. Chin, Hearing Officer

DATE: May 29, 2003

RE: D.T.E. 03-45 - Hearing Officer Notice Soliciting Comments on Whether the Department Should Open an Investigation to Establish an Instate Universal Service Fund

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On March 5, 2003, Richmond Connections d/b/a Richmond Networkx ("Richmond Networkx") filed a petition requesting that the Department of Telecommunications and Energy ("Department") institute a proceeding to investigate the establishment of a Universal Service Fund ("USF") for the Commonwealth. In its Petition, Richmond Networkx states that, in order to advance statewide access to affordable telecommunications service in a competitive environment, Richmond Networkx urges the Department to prescribe a program of support for the provision of basic and advanced telecommunications service that enables rates and service in high- and low-cost locations to be reasonably comparable. Richmond Networkx further states in its Petition that: (1) the program should be established to ensure that quality services are available at just, reasonable and affordable rates throughout the Commonwealth; (2) competition should be promoted in all local telecommunications markets through sources of universal service; and (3) support should be specific, predictable and sufficient, as well as competitively and technologically neutral.

Pursuant to the Telecommunications Act of 1996 ("Act"), states have the authority to adopt separate state universal service programs, provided that the state rules are not inconsistent with the Federal Communications Commission's ("FCC") universal service regulations and are

supported by “specific, predictable, and sufficient mechanisms . . . that do not rely on or burden Federal universal service support mechanisms.” See 47 U.S.C. § 254(f). When the FCC, pursuant to the Act, put in place the federal universal support system, it stated that it did not attempt “to identify existing implicit universal service support effected through intrastate rates or other state mechanisms” or “to convert such implicit intrastate support into explicit federal universal support.” Report and Order<sup>1</sup> at ¶ 14. Rather, the FCC concluded that “[s]tates, acting pursuant to sections 254(f) and 253 of the [Act], must in the first instance be responsible for identifying intrastate implicit universal support” and that “as competition develops, the marketplace itself will identify intrastate implicit universal service support, and that states will be compelled by those marketplace forces to move that support to explicit, sustainable mechanisms consistent with section 254(f).” Id.

With regard to establishing a universal service support mechanism in the Commonwealth of Massachusetts, the Department recently stated that it “may, in a future docket, consider adoption of a universal funding mechanism to reduce the arbitrage opportunities and the price squeeze problems presented by the interaction of deaveraged wholesale prices and averaged retail prices.” D.T.E. 01-31-Phase II Order at 83 (April 11, 2003) (“Phase II Order”). The Department, however, has never investigated the merits of establishing an instate universal service fund, and neither the Department nor the parties in D.T.E. 01-31-Phase II developed a record on this issue. In addition, many, if not most, states that have adopted instate USFs, have done so with explicit state statutory authority, notwithstanding the federal authority contained in 47 U.S.C. § 254(f). The Department’s enabling telecommunications statutes do not contain such an explicit grant of authority to create a USF in Massachusetts. For these reasons, the Department considers it prudent to solicit comments from telecommunications carriers and other interested persons to better inform its decision on whether to open a formal docket to establish an instate USF for purposes of “reduc[ing] the arbitrage opportunities and the price squeeze problems presented by the interaction of deaveraged wholesale prices and averaged retail prices.” Phase II Order at 83.

Accordingly, the Department invites all interested persons to file written comments regarding: (1) whether the Department has sufficient statutory authority under existing federal and state statutes to establish a USF for the Commonwealth; and, if so, (2) whether the Department should initiate an investigation into the establishment of a USF for the Commonwealth. Comments must be filed with the Department by close of business on **Friday, June 20, 2003**, and shall be detailed and supported with citations. Reply comments must be filed by close of business on **Tuesday, July 2, 2003**. Comments and reply comments should

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<sup>1</sup> In the Matter of Federal-State Board on Universal Service, CC Docket 96-45, Report and Order, FCC 97-157 (May 8, 1997) (“Report and Order”).

reference D.T.E. 03-45, the docket assigned for purposes of receiving comments in response to this notice. Interested persons should be aware that the assignment of this docket number for this matter is simply a ministerial administrative act and does not establish an adjudication or confer any rights typically associated with adjudicative proceedings.

Comments and reply comments shall be limited in length to a maximum of 20 one-sided, double-spaced typewritten pages. Comments and reply comments must be filed with the Mary L. Cottrell, Secretary, Department of Telecommunications and Energy, One South Station, 2<sup>nd</sup> Floor, Boston, MA 02110. Additionally, all comments and reply comments must be submitted to the Department in electronic format using one of the following methods: (1) by e-mail attachment to [dte.efiling@state.ma.us](mailto:dte.efiling@state.ma.us) and [Tina.Chin@state.ma.us](mailto:Tina.Chin@state.ma.us); or (2) on a 3.5" floppy diskette, IBM-compatible format. The text of the e-mail or the diskette label must specify: (1) an easily identifiable case caption; (2) docket number; (3) name of the person or company submitting the filing; and (4) a brief descriptive title of document (e.g., comments). The electronic filing should also include the name, title, and phone number of a person to contact in the event of questions about the filing. Text responses should be written in either Word Perfect (naming the document with a ".wpd" suffix) or in Microsoft Word (naming the document with a ".doc" suffix). Data or spreadsheet responses should be compatible with Microsoft Excel. Documents submitted in electronic format will be posted on the Department's website (<http://www.mass.gov.dpu>).

Any person desiring further information regarding this notice should contact Tina Chin, Hearing Officer, Department of Telecommunications and Energy, at (617) 305-3578.